IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TEXTRON INNOVATIONS INC., Plaintiff, v. SZ DJI TECHNOLOGY CO., LTD., DJI EUROPE B.V., SZ DJI BAIWANG TECHNOLOGY CO. LTD., AND IFIGHT TECHNOLOGY COMPANY LTD. Defendants.	Civil Action No. 2:22-cv-00351-RWS-RSP

DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW

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Defendants SZ DJI Technology Co., Ltd., DJI Europe B.V., SZ DJI Baiwang Technology Co. Ltd., and iFlight Technology Company Ltd. ("DJI" or "Defendants") respectfully move the Court to stay this case until the conclusion of the *inter partes* review ("IPR") proceedings of the U.S. Patent and Trademark Office Trial and Appeal Board ("PTAB") for each of U.S. Patent Nos. 10,275,950 ("the '950 Patent"), 8,332,082 ("the '082 Patent"), 8,682,505 ("the '505 Patent") and 11,288,972 ("the '972 Patent") (collectively, "the Asserted Patents"), including any appeals therefrom.

I. Preliminary Statement

Defendants respectfully request that the Court stay this litigation in its entirety until final resolution of Defendants' currently pending IPR petitions, which challenge each asserted claim in each Asserted Patent by Plaintiff Textron Innovations Inc. ("TII" or "Plaintiff). Each of the factors considered by courts in this District weighs in favor of a stay.

First, a stay will simplify the issues before this Court. Because Defendants' IPR petitions challenge every asserted claim of every Asserted Patent, the issues in this case will likely be significantly narrowed, if not entirely resolved, by the PTAB's resolution of the IPR proceedings. Moreover, regardless of their final disposition, the IPR proceedings will simplify the issues in this litigation including by affording the Court the benefit of the PTAB's findings and reasonings, informing claim construction and scope, and streamlining any issues that might survive IPR.

Second, Plaintiff will not suffer undue prejudice from a stay. Courts in this District consistently hold that the delay inherent in granting a stay pending IPR proceedings does not constitute undue prejudice; this case is no different. Because TII does not compete with Defendants and has not sought a preliminary injunction, it will not be unduly prejudiced by any delay to this litigation caused by a stay. To the contrary, a stay would benefit both parties by simplifying the issues and conserving resources.

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Finally, this case is well-positioned for a stay because the bulk of the case still lies ahead. Discovery is in its early stages and will continue for another seven months; no dispositive motions have been filed and none are due for another seven months; claim construction has not begun; the *Markman* hearing is not until January 19, 2024; and trial is nearly a year away. Staying this litigation will save significant time and resources for both parties and the Court.

Because all applicable factors weigh in favor of a stay, the Court should stay this litigation until final resolution of Defendants' IPR petitions.

II. Background

A. Plaintiff Does Not Practice the Claimed Inventions

Plaintiff TII filed this action on September 9, 2022, alleging that DJI infringed the Asserted Patents. Dkt. No. 1. DJI is a participant in the unmanned aerial vehicles market. *Id.* at ¶ 2. TII is a licensing company and subsidiary of Textron Inc., an aerospace technology company that specializes in the manufacturing of military helicopters and other aircraft technology. *Id.* at ¶¶ 6-9. TII claims to hold the Asserted Patents, but is not their originator and does not practice the technology described therein. Indeed, with respect to the Asserted Patents, TII has stated "[a]t this time, TII does not affirmatively contend that any product made, used, sold, and/or offered for sale in the United States by TII or its affiliates or licensees practices any asserted claim." Ex. 1 at 21.

B. This Case Is In Its Early Stages.

The majority of key deadlines and work required of the parties in this case still lie ahead. The parties still have months—until November 3, 2023—to amend their pleadings. Dkt. No. 38. Discovery is in its early stages: while the parties have exchanged initial disclosures and DJI has served its invalidity contentions, the bulk of discovery remains, with fact discovery open for another six months (until February 26, 2024) and expert discovery for another seven (until April 1, 2024). *Id.* The claim construction process has not begun, and this Court's *Markman* hearing is nearly five months away

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(January 19, 2024). *Id.* No dispositive motions have been filed and none are due for another seven months (until April 8, 2024). *Id.* Trial is nearly a year away, with jury selection scheduled for July 15, 2024. *Id.*

C. IPRs Have Been Timely Filed.

DJI timely filed IPR petitions for the '950 Patent on July 27, 2023; for the '082 and '505 Patents on July 28, 2023; and for the '972 Patent on August 15, 2023. 35 U.S.C. § 315(b). *See DJI Europe BV et al. vs. Textron Innovations Inc. et al.*, IPR2023-01106 (PTAB Jul. 27, 2023) (Petition for IPR of '950 Patent); *DJI Europe BV et al. vs. Textron Innovations Inc. et al.*, IPR2023-01107 (PTAB Jul. 27, 2023) (Petition for IPR of '950 Patent); *DJI Europe BV et al. vs. Textron Innovations Inc. et al.*, IPR2023-01105 (PTAB Jul. 28, 2023) (Petition for IPR of '082 Patent); *DJI Europe BV et al. vs. Textron Innovations Inc. et al.*, IPR2023-01104 (PTAB Jul. 28, 2023) (Petition for IPR of '505 Patent); *DJI Europe BV et al. vs. Textron Innovations Inc. et al.*, IPR2023-01227 (PTAB Aug. 15, 2023) (Petition for IPR of '972 Patent).

These petitions challenge every asserted claim of all four Asserted Patents and present new invalidity arguments not previously considered by the United States Patent and Trademark Office. The PTAB's institution decision for all petitions is expected in or around February 2024. 37 C.F.R. § 42.107(b).

III. Legal Standard

"The decision of whether to extend a stay falls solely within the court's inherent power to control its docket." *Arbor Glob. Strategies LLC v. Samsung Elecs. Co.*, 2021 WL 66531, at *2 (E.D. Tex. Jan. 7, 2021) (internal quotations omitted). Courts typically consider three factors in deciding "whether to stay litigation pending IPR of the asserted patent(s): (1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage,

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including whether discovery is complete and a trial date has been set, and (3) whether the stay will simplify issues in question in the litigation." *Scorpcast, LLC v. Boutique Media*, 2021 WL 3514751, at *2 (E.D. Tex. June 8, 2021) (internal quotations omitted). A stay is "particularly justified when the outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues." *Ericsson Inc. v. TCL Commc'n Tech. Holdings, Ltd*., 2016 WL 1162162, at *1 (E.D. Tex. Mar. 23, 2016) (internal quotations omitted); *see also NFC Tech. LLC v. HTC Am., Inc*., 2015 WL 1069111, at *6 (E.D. Tex. Mar. 11, 2015) (noting that "courts have been nearly uniform in granting motions to stay proceedings in the trial court after the PTAB has instituted inter partes review proceedings" and collecting cases).

Courts in this Circuit have equally been willing to grant stays pre-institution. *See, e.g., Meetrix IP, LLC v. Zoho Corp.*, No. 1:22-cv-588-LY, Dkt. No. 43 at 3 (W.D. Tex. Feb. 28, 2023) (granting stay prior to institution); *Spine Holdings, LLC v. Orthofix Medical, Inc*., No. 4:20-cv-77-SDJ, Dkt. No. 8 at 2 (E.D. Tex. June 8, 2020) (staying case on party agreement pending IPR prior to filing IPR petition).

IV. Argument

Each of the factors considered by this Court weighs in favor of staying this litigation until IPR proceedings are concluded.

A. A Stay Will Simplify Or Eliminate The Issues Before This Court

"[T]he most important factor bearing on whether to grant a stay in this case is the prospect that the inter partes review proceeding will result in simplification of the issues before the Court." *Scorpcast*, 2021 WL 3514751, at *3 (citing *NFC Tech*., 2015 WL 1069111, at *4). This technically complex case—with four patents-in-suit concerning flight control laws for constant vector flat turns, controlling an autonomous vehicle fleet, and aircraft wireless communications—would be significantly simplified

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by the PTAB's "full and focused consideration" during *inter partes* review. *NFC Tech.*, 2015 WL 1069111, at *4.

First, Defendants have petitioned for IPR of each of the claims in each of the Asserted Patents. Should the PTAB invalidate even a fraction of these claims, a stay will have saved the parties significant cost, time, and resources; should the PTAB invalidate all of the claims, no case will remain to be tried. *See Norman IP Holdings, LLC v. TP-Link Techs., Co.*, 2014 WL 5035718, at *3 (E.D. Tex. Oct. 8, 2014) (granting stay where "the PTAB's determination of the validity of all the asserted claims of the three patents-in-suit could narrow the issues before the court, prevent duplicative or unnecessary discovery, and encourage settlement or dismissal*"); Neuro Cardiac Techs., LLC v. LivaNova USA, Inc.*, 2018 WL 4901035, at *3 (S.D. Tex. Oct. 9, 2018) (granting stay where "[i]f any or all of the claims is found invalid, [the] case fails or is simplified.").

Second, a stay will simplify this litigation regardless of the final disposition of the IPR proceedings, because such proceedings will likely narrow the scope of disputed facts and give this Court "the benefit of the expert agency's full and focused consideration of the effect of prior art." *NFC Tech.*, 2015 WL 1069111, at *4. In particular, to the extent any claims survive IPR, Plaintiff will be limited through estoppel to the positions it took during IPR proceedings. *See, e.g., Aylus Networks, Inc. v. Apple, Inc.*, 856 F.3d 1353, 1360 (Fed. Cir. 2017) ("Extending the prosecution disclaimer doctrine to IPR proceedings will ensure that claims are not argued one way in order to maintain their patentability and in a different way against accused infringers"); *Huawei Techs. Co. v. T-Mobile US, Inc.*, 2017 WL 4385567, at *3 (E.D. Tex. Sept. 9, 2017) (stating that "[s]tatements made by a patentee during an IPR proceeding may support a finding of disclaimer," and finding plaintiff's statements to PTAB dispositive for purposes of granting summary judgment) *report and recommendation adopted*, 2017 WL 4310161 (E.D. Tex. Sept. 28, 2017). Moreover, "the expertise of the PTAB judges…is likely to be of considerable assistance to the Court" in their consideration and construal of the claims in this technically

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complex case. *CyWee Grp. Ltd. v. Samsung Elecs. Co*., 2019 WL 11023976, at *10 (E.D. Tex. Feb. 14, 2019). As the Court has not yet held a claim construction hearing and the parties have not yet begun to exchange proposed claim terms or constructions, a stay would prevent expending resources on issues that may be altered or rendered moot by the IPR proceedings.

B. A Stay Will Not Unduly Prejudice Plaintiff

Whether a patentee is unduly prejudiced by a stay "focuses on the patentee's need for an expeditious resolution of its claim." *SynQor, Inc. v. Vicor Corp*., 2015 WL 12916396, at *4 (E.D. Tex. Nov. 24, 2015) (internal quotations omitted). Where, as here, the only prospective delay is to a patentee's "vindication of patent rights," that factor is insufficient to defeat a stay motion. *NFC Tech.* 2015 WL 1069111, at *2. Because TII has no special need for expeditious resolution and the benefits of a stay outweigh any supposed prejudice, this factor weighs in favor of a stay.

DJI and TII are not direct competitors in any relevant market. *See Village Green Techs. LLC, v. Samsung Elecs. Co. Ltd.*, 2023 WL 416419, at *2 (E.D. Tex. Jan. 25, 2023) (approving argument that "a lack of competition weighs against a finding of undue prejudice."). TII, a licensing entity that merely holds the Asserted Patents, has not alleged that it has any products using the asserted technology that compete in the same market as the accused instrumentalities. *See Papst Licensing GmbH & Co., KG v. Apple, Inc.*, 2017 WL 11638426, at *2 (E.D. Tex. June 16, 2017) (finding no undue prejudice where "Papst is a licensing entity and does not compete with Apple"). Indeed, TII has represented that it does not "contend that any product made, used, sold, and/or offered for sale in the United States by TII or its affiliates or licensees practices any asserted claim." Ex. 1 at 21. TII accordingly will not suffer customer loss or injury to market share as a result of a stay, and "a stay will not diminish the monetary damages to which [it] will be entitled if it succeeds in its infringement suit." *SynQor,* 2015 WL 12916396, at *4 (E.D. Tex. Nov. 24, 2015).

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Nor is TII's "purported desire for a permanent injunction an adequate basis to deny a stay," given its failure to move for a preliminary injunction. *See SynQor*, 2015 WL 12916396, at *4 (request for permanent injunction inadequate basis to deny stay where plaintiff withdrew motion for preliminary injunction); *see also Stingray Music USA v. Music Choice*, 2017 WL 9885167, at *2 (E.D. Tex. Dec. 12, 2017) ("[T]he plaintiff did not move for a preliminary injunction, which contradicts [plaintiff's] assertion it cannot wait for a decision on infringement."). Without a "more particularized showing of harm, the delay inherent in granting a stay does not constitute undue prejudice." *SynQor*, 2015 WL 12916396, at *4.

Further, any plea of undue prejudice caused by delay is especially inapposite given the recent verdict in TII's favor—to the tune of hundreds of millions of dollars—in a prior litigation that TII characterizes as "a similar lawsuit involving the same parties." Dkt. No. 80 at 3. TII can scarcely demonstrate a "need for an expeditious resolution of its claim" here, *SynQor*, 2015 WL 12916396 at *4, while representing to this Court that its successful litigation elsewhere has already resolved "similar patents" and "overlapping accused products." Dkt. No. 80 at 1.

Finally, there is no tactical or strategic disadvantage to TII that would result from a stay of this litigation. To the contrary, because a stay will likely simplify the issues in this case (*see* Section IV.A *infra*) it will benefit both parties by affording an opportunity to "conserve [] time and resources" and "avoid[] potentially moot discovery." *Norman IP Holdings*, 2014 WL 5035718, at *2 (considering benefit to both parties in analysis of undue prejudice and finding factor to weigh in favor of stay).

C. This Case Is in an Early Stage and Well-Positioned for a Stay

A stay is appropriate "if there remains a significant amount of work ahead for the parties and the court, even when the parties and/or the court have already devoted substantial resources to the litigation." *Norman IP Holdings*, 2014 WL 5035718, at *3. Here, the bulk of work for the parties and virtually all critical deadlines still lie ahead, weighing significantly in favor of a stay.

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Fact discovery is in its early stages, and will continue for another six months; expert discovery will be open for another seven. The parties have not yet begun to exchange proposed claim terms, and this Court will not hold its *Markman* hearing until January 19, 2024. No dispositive motions have been filed and none are due for another seven months. Indeed, the parties still have months ahead—until November 3, 2023—in which to amend their pleadings. Finally, trial is still approximately one year away, with jury selection scheduled for July 15, 2024.

With the bulk of significant and expensive work on this case—and virtually all key deadlines—yet to come, a stay is appropriate and would save substantial resources and reduce the burden on both parties and this Court. Indeed, this Court regularly grants stays in cases where litigation is significantly more advanced than here. *See, e.g., Emed Techs. Corp. v. Repro-med Sys., Inc.*, 2016 WL 2758112, at *2 (E.D. Tex. May 12, 2016) (granting stay pending IPR following substantial completion of document discovery and when claim construction briefing had already begun); *NFC Tech.*, 2015 WL 1069111 at *3–4 (granting stay pending IPR where parties had engaged in "significant discovery" and "claim construction briefing was complete"); *Scorpcast*, 2021 WL 3514751, at *3 (E.D. Tex. June 8, 2021) (granting stay pending IPR where claim construction hearing had taken place, close of fact and expert discovery were 30 and 60 days away, respectively, and jury selection was six months away).

Finally, courts in this district look favorably on prompt motions to stay, including those filed before an institution decision is made. *See, e.g., Papst*, 2017 WL 11638426, at *4 (crediting "Apple's diligence…in moving for a stay" and weighing prompt timing of pre-institution motion in favor of stay); *Stragent, LLC v. BMW of N. Am., LLC*, 2017 WL 2839260, at *2 (E.D. Tex. Apr. 20, 2017) (noting that "BMWNA filed its Motion to Stay only ten days after it filed its IPR petitions," and finding "Defendants' conduct favors a stay."); *Arbor*, 2021 WL 66531, at *2 ("Defendant did not delay in notifying the Court of its desire to seek a stay of the litigation while the IPR proceeds"). As courts have noted, "[i]f the PTO declines inter partes review, little time is lost, but if [the] PTO grants inter partes review, the

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promise is greater for an important contribution by the PTO to resolution of the governing issues in the litigation." *e-Watch, Inc. v. ACTi Corp.*, 2013 WL 6334372, at *8 (W.D. Tex. Aug. 9, 2013). Courts in this circuit have accordingly granted stays even prior to institution. *See, e.g., Uniloc 2017 LLC v. LG Elecs. U.S.A., Inc.*, 2020 WL 374545, at *1 (N.D. Tex. Jan. 23, 2020) (granting stay prior to IPR institution); *Meetrix IP, LLC v. Zoho Corp*., No. 1:22-cv-588-LY, Dkt. No. 43 at 3 (W.D. Tex. Feb. 28, 2023) (same); *Spine Holdings, LLC v. Orthofix Medical, Inc*., No. 4:20-cv-77-SDJ, Dkt. No. 8 at 2 (E.D. Tex. June 8, 2020) (staying case pending IPR prior to filing IPR petition). The same result is proper here, given the significant simplification and economy of resources that a stay offers both parties and this Court.

V. CONCLUSION

For the reasons set forth above, Defendants' motion to stay this case pending the PTAB's final resolution of all IPRs of the Asserted Patents should be granted.

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Dated: September 1, 2023

Respectfully Submitted,

/s/ Andy Tindel

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system, per E. DIST. TEX. LOC. CT. R. CV-5(a)(3) on this 1st day of September, 2023. Any other counsel of record will be served via electronic transmission.

/s/ Andy Tindel
Andy Tindel

CERTIFICATE OF CONFERENCE

I hereby certify that Defendants have complied with the meet and confer requirement of Local Rule CV-7(h) by communicating with counsel for Plaintiff on August 30, 2023, concerning the filing of Defendants' Motion to Stay Pending *Inter Partes* Review. Plaintiff's counsel advised counsel for Defendants that Plaintiff was opposed to the relief requested in Defendants' Motion to Stay Pending *Inter Partes* Review.

/s/ Andy Tindel
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